

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Appeal No. 352-DB of 1999

Date of Decision : April 22, 2008

Gian Singh and Jagir Singh

... Appellants

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE S. D. ANAND**

**Present:- Mrs. B.K. Mann, Advocate with Mr. Sandeep Maan, Advocate
for the appellants.**

**Mr. A.S. Jattana, Addl. Advocate General, Punjab
for the respondent.**

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S.D. ANAND, J.

In case FIR No.4 dated 4.1.1997, Police Station Sadar, Jalandhar as many as six persons in all were tried for offences under Sections 148, 302/149 IPC and Section 27 of the Arms Act. The appellants are the only two who suffered indictment at the hands of the learned Trial Judge. Others came to be acquitted. Appellant Gian Singh was convicted for offences under Section 302 IPC and Section 27 of the Arms Act; while appellant Jagir Singh was convicted under Section 302 read with 34 IPC and also under Section 27 of the Arms Act.

The prosecution allegations, as upheld by the learned Trial Judge at the trial, were as under:-

On 4.1.1997, first informant Gurnam Singh was home bound in the company of his parents (Baldev Singh, Member Panchayat and mother Jaswinder Kaur) and uncle (father's younger brother) Davinder Singh at about

9.30 AM. When they reached near the Haveli of Shanker (located near the Phirni), the appellants (and also the acquitted accused) were found available over there. Appellant Gian Singh was armed with a double barrel gun and so also was his sibling appellant Jagir Singh. The appellants raised a Lalkara that Baldev Singh would be taught a lesson for obtaining possession of the land and for building a Gurdwara over it. Thereafter, appellant Gian Singh fired a shot which hit the left side of chest of Baldev Singh. It was followed by a number of shots fired by both the appellants. Baldev Singh fell down upon the ground. The appellants fled the spot and took along their respective weapons of offence. Baldev Singh was taken to Civil Hospital, Jalandhar, where he was declared brought dead.

Gurmail Singh and Jarnail Singh, residents of village Mirpur had donated about one Kanal of land for construction of a Gurdwara. That land was in illegal possession of the appellants and the acquitted accused. In his capacity as Pardhan of Gurdwara and also a Panch, Baldev Singh wanted the appellants to vacate that land in order to enable the construction of the Gurdwara. On that count, the appellants had held out a threat to Baldev Singh, two days prior to the impugned occurrence, that he (Baldev Singh) should drop the demand or else face the consequences for trying to be a leader. It is that grievance which actuated the appellants to commit the crime for which they stand convicted.

The prosecution, in an endeavour to prove the charge, examined PW 1 Dr. Gurinder Chawla, PW 2 Gurnam Singh, PW 3 Jaswinder Kaur, PW 4 Som nath, PW 5 ASI Sukhdev Singh, PW 6 Dr. Ajay Sahni, Surgical Specialist, PW 7 Jaswinderpal Patwari, PW 8 Constable Darshan Kumar, PW 9 Munish Sharma, Draftsman, PW 10 H.C. Surinder Kumar and PW 11 SI

Nirmal Singh at the trial.

PW 1 Dr. Gurinder Chawla had conducted the post-mortem examination on the dead body of Baldev Singh and had found the following injury on his person:-

“ 1. 2.5 x 3 cm oval shaped wound with inverted margins present on the left side of chest 9 cm below the left nipple and 4 cm lateral to the mid line drawn from the left nipple in the 7th and 8th inter costal spaces. On probing the direction of probe was downward and backwards. On further dissection underlying tissues found lacerated and on dissection blood found in chest cavity. On further dissection abdominal cavity was full of blood. 5 x 5 cm lacerated wound found on both the superior and inferior surface of stomach. Lower margin of left lobe of liver lacerated. On further examination of abdominal viscera a metallic piece was found lodged in the intestinal mesentery with the big haematoma around it. Stomach was found empty. Bladder was found empty. All other organs were found normal.”

While describing the injury aforementioned to be ante-mortem, the Medical Officer opined that the death had occurred on account of shock and haemorrhage which was sufficient to cause death in the ordinary course of nature.

PW 2 Gurnam Singh is the first informant and a son of the deceased. PW 3 Jaswinder Kaur is wife of the deceased and mother of PW 2 Gurnam Singh. PW 4 Som Nath is a former police official who had attested the memo, vide which three empties of .12 bore rifle and blood stained earth were taken into possession in the form of a sealed parcel. PW 5 ASI Sukhdev

Singh tendered his formal affidavit Ex.PL in to evidence. PW 6 Dr. Ajay Sahni had sent ruqqa Ex.PM to SHO, Police Station Sadar, Jalandhar, about Baldev Singh having been brought dead to the hospital. PW 7 Jaswinderpal Patwari Halqa, Haler testified that he had provided relevant extract of Aksh Shijra Killa Bandi of village Meerpur to the police, copies whereas were tendered by him into evidence as Ex.PN and Ex.PQ. PW 8 Constable Darshan Kumar had delivered the Special Report to the learned Illaqa Magistrate. PW 9 Munish Sharma, draftsman had prepared scaled site plan Ex.PR on 24.1.1997. PW 10 Head Constable Surinder Kumar was posted as MHC in Police Station Sadar, Jalandhar, on 4.1.1997. The case property was deposited with him, with seals intact, on that date and he forwarded it to the Forensic Science Laboratory on 8.1.1997 and, then, on 27.1.1997 through Constable Darshan Kumar. He tendered his formal affidavit Ex.PS to the above effect into evidence. PW 11 SI Nirmal Singh had investigated the case. P.Ws Devinder Singh, Malkiat Singh, Santokh Singh, Jarnail Singh, Phulwinder Singh, Dalbir Singh, HC Harjinder Singh, HC Balkar Singh, Sarbjit Singh, Gurnam Singh, ASI Jaspal Singh, Gurmail Singh, Sarpanch, Piara Singh, Mandip Singh, Photographer, Gurmit Singh, Harbhajan Singh, Gurmej Singh and HC Harjit Singh were given up as unnecessary by the prosecution.

Appellant Gian Singh raised the plea of innocence in the following terms:-

“The witnesses are false. I was in possession of piece of land in village Meerpur for the last 25 years on which I had made construction including boundlary walls and deceased Baldev Singh wanted to take forcible possession of the said land and wanted to construct Gurudwara Sahib on it. On the day of

occurrence Baldev Singh deceased along with Jarnail Singh, Gurmail Singh and others duly armed with weapons came to my land to dispossess me and to demolish my construction. When they started demolishing walls with hammers, I came to know of it and reached the land and requested them not to make demolition without getting demarcation. I was attacked by them. I in order to save my life went upstairs my Haveli. Baldev Singh deceased and others followed me and in self defence of my person and property I fired at Baldev Singh. My co-accused were not present with me at that time. P.Ws Gurnam Singh, Jaswinder Kaur and Davinder Singh were not present there. I live with my son Jaspal Singh. The other accused are separate from me in residence. I have been falsely implicated in this case.”

Appellant Jagir Singh asserted innocence by raising a plea of alibi. The appellants did not adduce any evidence in defence.

As already noticed, the accused other than the appellants were given the benefit of doubt and acquitted; while the appellants suffered conviction which they have challenged by filing the present appeal before this Court.

The learned counsel for the appellants argues, at the very out set, that the prosecution plea against Jagir Singh is thoroughly frivolous, a fact which is evident from the own presentation of the prosecution that no shot fired by him hit the deceased.

That averment is borne out by a perusal of the testimony of Dr. Gurinder Chawla, who found only one injury on the dead body of the deceased. It may be particularly noticed in the context that the three empties

found at the spot were not found by the FSL to have been fired from the DDBL attributed to appellant Jagir Singh.

In the scaled site plan Ex.PR, no place where Jagir Singh may have been available at the time of the impugned occurrence, is indicated.

We have, thus, no hesitation in upholding the plea advocated for exoneration of appellant Jagir Singh from liability and we so order accordingly.

However, the plea put forward on behalf of appellant Gian Singh for exoneration from liability deserves to be merely noticed to be negated. There is affirmative evidence attributing the fatal shot to him in the statements of PW2 Gurnam Singh and PW 3 Jaswinder Kaur, both of whom stuck to their guns in the course of their cross-examination. Except a minor variation here or there, they were categorical in supporting the prosecution presentation in all its essential particulars, starting from the appearance of the appellants on the scene and culminating in the death of Baldev Singh on account of the gun shot injury given by appellant Gian Singh. The Forensic Science Laboratory report also nails appellant Gian Singh. The Forensic Science Laboratory, which examined the empty and also the DDBL gun recovered at the instance of appellant Gian Singh in pursuance of a disclosure statement, recorded a categorical finding that the relevant shot had been fired from that gun. The medical segment is fully supportive of the prosecution version that it was Gian Singh who fired a shot which hit Baldev Singh. In that view of the things, it is apparent that the medical presentation is completely in accord with the ocular presentation.

The prosecution has also been able to convincingly prove the motive which actuated the appellant to murder Baldev Singh. The appellants

are proved on record to have been in illegal possession of certain land which had been donated by the donors for the construction of a Gurdwara. There was nothing unnatural in Baldev Singh having asked the appellant to vacate that land as he was a Member Panchayat and was President of the Gurdwara Committee. The motive part is also satisfactorily established on the file.

Apart therefrom, we cannot be unmindful of the fact that there is no earthly reason why the PWs, who are close relations of the deceased, would have deposed falsely accusing appellant Gian Singh of murder. Why would they do so when their act may result in enabling the 'real' culprit to get away scot-free, is beyond our logical comprehension. On the other hand, PW2 – Gurnam Singh and PW3 – Jaswinder Kaur being the son and wife of the deceased, would like to ensure that the real murderer (of their father/husband) gets the noose.

In the light of the foregoing discussion, we find the appeal filed by Gian Singh appellant to be devoid of merit and is ordered to be dismissed. However, the appeal filed by Jagir Singh appellant shall stand allowed and he is acquitted of the charge.

(S.D. ANAND)
JUDGE

April 22, 2008.

(ADARSH KUMAR GOEL)
JUDGE

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